

LEE E. McDONALD

IBLA 82-697

Decided November 17, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer. M 50950.

Affirmed.

1. Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Patented or Entered Lands

An oil and gas offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

2. Navigable Waters -- Oil and Gas Leases: Lands Subject to -- State Lands

An oil and gas offer embracing land in the bed of a navigable river, which is State land, is properly rejected.

3. Oil and Gas Leases: Discretion to Lease

Uncertainty of title to oil and gas in a tract of land is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States. A decision rejecting an offer covering islands in a navigable river will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

APPEARANCES: Lee E. McDonald, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Lee E. McDonald has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated March 17, 1982, rejecting noncompetitive oil and gas lease offer M 50950 filed May 1, 1981, for lot 6 of sec. 5, T. 14 N., R. 55 E., Principal meridian.

The rejection was based on the following:

1. That approximately 5 acres in the southwest part of lot 6 is embraced in an oil and gas lease which had priority in time of filing (M 31679, filed May 27, 1975, and issued effective July 1, 1975).
2. That the oil and gas rights in the remaining portion of land are not owned by the United States.

On April 9, 1982, appellant filed a timely notice of appeal asserting that lot 6 was never patented, "being sandbars in the middle of the river according to the original survey," that lot 6 "is not a recognized island claimable by the State," and that lot 6 is not included in railroad patent 15 for 373.87 acres of sec. 5 or any other patent. He concludes, therefore, that the ownership of lot 6 and the minerals thereunder belong to the United States and are available for oil and gas leasing. He also contends that there is no conflict with lease M 31679 but if there is that his offer should only be rejected to the extent of the conflict.

Patent 15, insofar as it relates to sec. 5 of T. 14 N., R. 55 E., Principal meridian, granted to the Northern Pacific Railroad Company (NPR) "[a]ll of section five, containing three hundred and seventy three acres and eighty-seven hundredths of an acre," on May 26, 1896. n1 According to the 1883 survey plat for the township this acreage was all of sec. 5 east and west of the meander lines of the Yellowstone River. Lot 6, as surveyed, covered 35.52 acres of dry land contiguous to the east meander line of the river and was included in the railroad's grant. Title to the bed of the river passed to the State of Montana upon its admission to the Union on November 8, 1889, because this portion of the river was considered to be navigable. Leonard R. McSweyn, 28 IBLA 100 (1976); see Scott v. Lattig, 227 U.S. 229, 242-43 (1913).

According to the 1883 survey plat, the Yellowstone River was positioned in the west central portion of sec. 5 flowing in the south-north direction. A resurvey, authorized by the General Land Office on November 17, 1939, and approved June 2, 1947, shows the river as entering the east-southeast portion of the section, a considerable distance to the east of where it was originally positioned, and exiting through the north central portion of the section.

The impact of this shift on lot 6 is that a portion of the southwest corner of lot 6 is now west of the river's west meander line and the remainder of the lot is either bed of the river or portions of two islands formed in the river.

¹/ The land was granted pursuant to the Act of July 2, 1864, 13 Stat. 365, and the Joint Resolution of May 31, 1870, 16 Stat. 378.

Based on a finding of error in the 1883 survey plat, as noted on the 1947 plat, and subsequent analysis, BLM has determined that the western boundary of the Yellowstone River did not coincide with the meander line at the time the railroad patent was issued based on the meander line, that the land between the meander line and the river's boundary was public land, and that, as the river shifted, the accreted lands were therefore public lands. See Memorandum from Supervisory Cadastral Surveyor to Manager, Montana Land Office, dated March 6, 1962; Director's decision, Ralph L. Bassett, Montana 06853 (Mar. 17, 1958).

In its recent decision styled Ralph F. Rosenbaum, 66 IBLA 374 (1982), the Board reviewed the law with respect to accretion and riparian rights when a navigable river shifts its course. Two portions of that discussion are applicable to the circumstances now before us. First, we said,

In cases where land accretes to a riparian lot to such an extent that it reaches across a former riverbed and restores land on the opposite shore which had eroded away, title to the accretion is deemed to be in the riparian owner to whose land the accretion attaches and not in the original owner of the eroded land. Matthews v. McGee, 358 F.2d 516 (8th Cir. 1966); Beaver v. United States, 350 F.2d 4 (9th Cir. 1965), cert. denied, 383 U.S. 937 (1966); Edwin J. Keyser, 61 I.D. 327 (1954), and cases cited therein.

66 IBLA at 380-81. Second, we said, "Once land has eroded away and becomes part of the bed of a navigable river, the original owner is divested of title to the land and the state generally takes title." 66 IBLA at 382 (emphasis in original). See Earl Hummel, 44 IBLA 110, 119 (1979) (Judge Stuebing concurring). Thus, as the river moved, title to the southwest corner of lot 6 shifted from the NPR to the State of Montana and then by accretion to the United States as a result of the change in the course of the Yellowstone River. Title to the portion of lot 6 which is now in the bed of the river went from the railroad to State ownership. See Mont. Code Ann. § 70-1-202 (1979). Title to the portion of lot 6 which is now island in the river depends on how and when the islands were formed. 2/

2/ Islands in existence at the time a state is admitted to the Union, whether surveyed or not, remain public land of the United States. Moss v. Ramey, 239 U.S. 538 (1916). Islands arising in a navigable river thereafter are not public land because the state owns the bed of the river. State of Oregon, 60 I.D. 314 (1949).

The question of whether islands formed in a navigable waterway after admission of a state to the Union belong to the state or an adjacent riparian owner depends on state law. 65 C.J.S. Navigable Waters § 117 (1966). Mont. Code Ann. § 70-18-203 (1979) provides that "[i]slands * * * formed in the beds of streams which are navigable belong to the state if there is no title or prescription to the contrary." However, Mont. Code Ann. § 70-18-205 (1979) provides that "[i]f a stream navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner."

[1] Prior to rejecting appellant's offer, BLM requested that the Chief, Branch of Cadastral Survey, determine whether the southwestern corner of lot 6 was included in oil and gas lease M 31679 because that lease was issued using a metes and bounds description. By memorandum dated March 9, 1982, the Chief, Branch of Cadastral Survey, confirmed that the southwestern corner of lot 6 was within the lease. The leasing of land to a prior offeror under a valid offer dictates rejection of appellant's offer to lease as to those lands. El Paso Products Co., 10 IBLA 116 (1973). See David A. Provinse, 35 IBLA 221, 85 I.D. 154 (1978).

[2] In addition, an oil and gas lease offer embracing land in the bed of a navigable river, which is State land, is also properly rejected. Leonard R. McSweyn, supra.

[3] As previously indicated, the ownership of the two islands now making up a part of lot 6 depends on how they were formed. Appellant believes they were created from a sandbar noted on the 1883 plat and therefore belong to the United States. A comparison of the 1883 and 1947 plats shows that the southernmost portion of the sandbar is in the same location as the northern portion of one of the islands. This island, if created from the sandbar, would only be public land if it existed as an island on the date of admission of Montana to the Union; otherwise it would be State land. The only other way in which the islands would be public land is if they were created by the river dividing the land from the western shore of the river. See generally note 2 supra.

This Board has previously held that uncertainty regarding the status of mineral deposits is sufficient grounds for rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. Where title to a tract of land that is the subject of an oil and gas lease offer is in doubt, the burden is on the applicant to search the land records to establish the eligibility of the tract for leasing. Don Jumper, 24 IBLA 218 (1976). In the absence of any evidence presented by appellant showing that the islands in question are public land, we affirm BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

